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Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
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Re: *Yuga Labs, Inc. v. Ripps, et al.*, No. 22-56199 – Response to FRAP 28(j) Letter

Dear Ms. Dwyer,

Yuga’s FRAP 28(j) letter notifying this Court of the district court’s summary judgment on federal claims not at issue in this appeal is improper and should be rejected.¹

First, FRAP 28(j) “is not designed to bring new evidence through the back door.” *Trans-Sterling, Inc. v. Bible*, 804 F.2d 525, 528 (9th Cir. 1986). But that is what Yuga attempts to do—it claims the district court’s decision is “germane” solely because it offers a decision based on a more “fully developed factual record.” That expanded factual record is not pertinent here at all because Appellants’ anti-SLAPP motion challenges only the legal sufficiency of Yuga’s claims—a point Yuga itself stresses in its response. *See* Appellee’s Br. at 29-30.

Second, Yuga’s letter directly contradicts its previous position about the relationship between its federal and state law claims. When Appellants moved the district court to stay proceedings pending appeal, Dkt. 118, Yuga opposed on the ground that “[n]either the outcome of the anti-SLAPP appeal nor the result of proceeding with the federal claims would affect one another to warrant a stay,” Dkt. 120 at 20-21. The district court adopted this view in its opinion denying the stay request. *See* Dkt. 178 at 6-7. Yuga should not be permitted to change position just because it now believes it advantageous to claim a relationship between its federal and state claims. *See Marx v. Loral Corp.*, 87 F.3d 1049, 1056 (9th Cir. 1996) (party may not take a position on appeal that “direct[ly] contradict[s]” its position in the district court).

Respectfully submitted,

/s/ Louis W. Tompros

Louis W. Tompros

cc: Counsel of Record (via ECF)

¹ This Court will have an opportunity to properly consider that decision once the district court renders a final judgment and Appellants are able to file an appeal therefrom.